Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

Written submission from Stonewall Scotland

Background

Stonewall Scotland was established in 2000. Since then we have been campaigning for equality and justice for gay, lesbian, bisexual and transgender (LGBT) people living in Scotland. We work with businesses, the public sector, the Scottish Government, the Scottish Parliament and a range of partners to improve the lived experience of LGBT people in Scotland.

Stonewall Scotland supported the introduction of the Offensive Behaviour at Football and Threatening Communication Act, noting the serious impact that homophobic, biophobic and transphobic behaviour in sport has for LGBT people’s safety and confidence to participate in sport.

1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

We would be concerned that an outright repeal of the Act may send a worrying message that prejudiced based and threatening behaviour at football is acceptable, even where other legislation could also apply. However, we believe that five years on from the commencement of this Act, it would be appropriate for the Scottish Government to conduct a detailed review of its implementation and impact in tackling prejudiced based incidents in relation to football and threatening communications. This review should be conducted with the view to improving implementation, and where appropriate reforming the Act to ensure that it is both effective in reducing instances of threatening and offensive behaviour and consistently enforced across different prejudiced based behaviours.

2. Did you support the original legislation?

Stonewall Scotland supported the introduction of Section 1 of the Offensive Behaviour at Football and Threatening Communications Act. This was on the grounds that a substantial proportion of offensive and threatening behaviour that occurs towards LGBT people at football matches were not dealt with under existing laws and this legislation was a step towards tackling the problem.

During the consultation on the 2012 Act, Stonewall Scotland and other LGBT organisations in Scotland supported the extension of Section 6 of the Act (which relates to threatening
communications) to cover all protected characteristics which fall under hate crime legislation, in order to ensure a consistency and parity of treatment across protected groups. We feel that such a change would still be appropriate.

3. Do you consider that other existing provisions of criminal law are sufficient to prosecute offensive behaviour related to football which leads to public disorder? If so, could you specify the criminal law provisions? Or does repeal of section 1 risk creating a gap in the criminal law?

Stonewall Scotland supported the introduction of the 2012 Act on the basis that anti-LGBT abuse at football was not being adequately addressed under existing offenses. We are concerned that a repeal of the Act could muddy the waters about acceptable behaviour at football matches, and send a worrying message regarding the seriousness of homophobic, biphobic and transphobic (HBT) behaviour at football matches. Stonewall’s research suggests that two in five victims of homophobic hate crime don’t report the incident because they don’t think it is serious enough (Stonewall, 2013). LGBT organisations and criminal justice agencies in Scotland have been working hard to combat this belief and give LGBT people the confidence to report any hate incident. We would be concerned about the impact that a repeal of the Act would have on public understanding of what constitutes a hate crime, and public confidence to report incidents when they occur.

Stonewall Scotland is clear, however, that the issue of HBT behaviour at football is far from resolved, and further steps need to be taken to ensure that all fans, players and professionals feel safe and included in our national game. We believe that a detailed review of the implementation of the Act would therefore be appropriate, with the view to looking at where provisions might be clarified or improved.

Recent research conducted in 2016 by ICM, commissioned by Stonewall, showed that 60 per cent of sports fans in Scotland have witnessed language or behaviour which was offensive to LGBT people in a sport setting in the last five years. Football fans are the most likely to hear homophobic abuse, with 82 per cent of Scottish fans who had witnessed anti-LGBT language or behaviour at a sporting event, saying that it took place in relation to football. The research also reveals that 15 per cent of Scottish sports fans would be embarrassed if their favourite player came out as gay.
4. Do you have a view on the focus of section 1 of the 2012 Act, which criminalises behaviour surrounding watching, attending or travelling to or from football matches, which may not be criminalised in other settings?

Please see response to question 3.

5. Do you consider that other existing provisions of criminal law are sufficient to prosecute threats made with the intent of causing a person or persons fear or alarm or inciting religious hatred? If so, could you specify the criminal law provisions? Or does repeal of section 6 risk creating a gap in the criminal law?

We are extremely concerned that the problem of hateful communication online is one that is continuing to grow. This is an issue that we have looked into as part of our upcoming LGBT in Scotland report, which is due to be published in early September.

We would oppose a repeal of Section 6, which provides important protection for LGBT people who are currently experiencing an increase in abusive and threatening communications online. We also strongly believe that condition B of section 6 of the 2012 Act should be extended to include disability, sexual orientation, transgender identity and race. Of these characteristics, only race is currently covered by other legislation.

6. Do you have a view on the proposed transitional arrangements in the Bill: that there should be no further convictions for section 1 and 6 offences from the date on which the repeal of those offences takes effect; and that the police will cease issuing fixed penalty notices at least from the point at which the Bill is passed?

Stonewall Scotland is opposed to a blanket repeal of the Act. In the event of a repeal, transitional arrangements should be made to ensure that all fans can feel safe attending matches and public match screenings with confidence. This will include working with clubs, licensed premises, police, and security personal to ensure that sanctions are taken against any inappropriate behaviour, and arrests are made under other relevant legislation as appropriate (including recording of aggravating factors).

There will also need to be clear and consistent communications from the Scottish Government, Police Scotland, clubs and security companies that abusive and discriminatory behaviour at
football is not tolerated. The must be a recognition that a repeal of the Act may raise fears among affected communities that they are no longer protected, and a strategy should be in place to allay such fears.

7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

Stonewall Scotland works to achieve acceptance without exception for LGBT people. We have not been directly involved in work to tackle sectarianism, and therefore cannot comment on the effectiveness of the 2012 Act in relation to this issue. However, we are concerned that the implementation of the 2012 Act may have been weighted towards behaviour relating to a person’s religion over their sexual orientation or race. The University of Stirling review of the legislation suggested that in the 2013/14 season, 28 per cent of home and 35 per cent of away fans witnessed sectarianism, compared to 19 per cent of home fans and 22 per cent of away fans who witnessed offensive behaviour relating to a person’s sexual orientation. Despite this, there are comparatively very few arrests under the Act based on behaviour relevant to sexual orientation – in the year 2013/14, less than one per cent of charges brought under the Act were with regard to behaviour relating to someone’s sexual orientation.

Recommendation one of the University of Stirling study stated that “the formal objectives of the Act are to address a variety of hate crimes, not just sectarianism. Acknowledging that there appears to have been a recognised reduction in sectarian-associated offences, this broader focus needs to be strengthened.” We strongly support this recommendation and believe that such work to strengthen the implementation of the Act with regards sexual orientation should happen alongside awareness raising campaigns about the impact of anti-LGBT behaviour and engagement with LGBT players, professionals and fans.

References

ICM (2016) Research for Stonewall on fans’ attitudes towards LGBT equality in sport
Stonewall (2013) Homophobic Hate Crime